IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 08.02.2002

Coram:-

THE HONOURABLE MR. B. SUBHASHAN REDDY, CHIEF JUSTICE

and

THE HONOURABLE MRS. JUSTICE A. SUBBULAKSHMI

Writ Appeal No.1876 of 2001 and W.P. No.16589 of 2001
and W.P. Nos. 17179, 20322 and 23620 of 2001 and 1887 of 2002 and W.A.M.Ps and W.P.M.Ps.

W.A. No.1876 of 2001

Poovizhi, minor ... Appellant

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Department of Education,
Fort St. George,
CHENNAI – 600 009.

$2. The Director,
Directorate of Govt. Examination,
College Road,
CHENNAI ... Respondents

Appeal against order dated 17.9.2001 passed by learned single Judge
in W.P. No.16937 of 2001.

W.P. No.16589 of 2001

#S. Packiaraj ... Petitioner

Vs.

$1. The Government of Tamil Nadu,
rep. by its Secretary,
Department of Education,
Fort St. George,
CHENNAI – 600 009.

$2. The Director,
Directorate of Govt. Examination,
College Road,
CHENNAI

$3. Balasankaralingam,
W/195, 15th Street,
Anna Nagar,
CHENNAI – 600 101 … Respondents

W.P. No.17179 of 2001

#S.M.T.C. (Sri Mani Tutoril Centre)
Rep. by its Principal B.S. Dashnamurthi,
Kumbakonam … Petitioner

Vs.

$1. The Government of Tamil Nadu,
rep. by its Secretary,
Department of Education,
Fort St. George,
CHENNAI – 600 009.

$2. The Director,
Directorate of Govt. Examination,
College Road, CHENNAI

$3. M. Prabhu (Minor)
6, Kuppuswamy Street
Pazhavanthangal,
CHENNAI – 600 114.

$4. S. Kavitha (Minor)
40, II Street, K.N. Extension,
CHENNAI – 600 091. … Respondents

W.P. No.20322 of 2001

#Minor S.R. Thangadurai … Petitioner

Vs.

$1. The Government of Tamil Nadu,
rep. by its Secretary,
Department of Education,
Fort St. George,
CHENNAI – 600 009.

$2. The Director,
Directorate of Govt. Examination,

College Road,
CHENNAI ... Respondents

W.P. No.23620 of 2001

#1. N. Balamurugan
#2. R. Gowri
#3. P. Kavitha ... Petitioners

Vs.

$1. The Government of Tamil Nadu,
rep. by its Secretary,
Department of Education,
Fort St. George,
CHENNAI – 600 009.

$2. The Director,
Directorate of Govt. Examination,
College Road,
CHENNAI ... Respondents

W.P. No.1887 of 2002

V.K. Abhiramasundari (Minor) ... Petitioner

Vs.

$1. The Government of Tamil Nadu,
rep. by its Secretary,
Department of Education,
Fort St. George,
CHENNAI – 600 009.

$2. The Director,
Directorate of Govt. Examination,
College Road,
CHENNAI ... Respondents

Petitions under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus as stated therein.

!For Appellant : Mr. M. Ravindran, Sr.Counsel
for Mr.J.Sethuram

!For Petitioner in W.P.No.16589 of 2001: Mr. N.G.R. Prasad for Mr.R. Sankara Subbu

!For Petitioner in W.P. No.17179 of 2001: Mr. R. Rajarathinam

!For Petitioners in W.P.No.23620 of 2001: Mr. R. Saseetharan

!For Petitioner in W.P. No.20322 of 2001: Mr. C. Selvaraju

!For Petitioner in W.P. No.1887 of 2002 : Mr. N. Paul Vasanthakumar

^For Respondents 1 and 2 in the W.A. : Mr. N.R. Chandran,
and Writ Petitions. Advocate General assisted by
Mr. V.R. Rajasekaran,
Govt. Pleader.

: J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

The question in this batch of writ petitions and connected writ appeal is whether the doctrine of legitimate expectation, which is a judge-made law, can be invoked to assail the changed Government policy relating to improvement examination as promulgated in G.O. Ms. No.142, School Education Department, dated 12.9.2001.

2. We may have to go to the genesis of the said Government Order, which is impugned in this batch of writ petitions. Henceforth, the said G.O. Ms.No.142, dated 12.9.2001 will be referred to as the impugned G.O.

3. The Government of Tamil Nadu evolved a scheme enabling the students to re-appear in the Higher Secondary Examination for improvement called 'improvement examination'. That was introduced for the first time, by issuance of G.O. Ms.No.1457, Education Department, dated 7.10.1989. It is needless to mention that the said Scheme has been evolved in exercise of the State's executive power under Article 162 of Indian Constitution. The Scheme for the Award of Higher Secondary Course Certificate was introduced in 1978 and the first batch of Higher Secondary candidates appeared for the examination in March 1980. Before the issuance of G.O. Ms.No.1457, only such of the candidates, who failed in the subjects, were permitted to write further examinations in the failed subjects. But by the said G.O. Ms.No.1457, the candidates, who have even passed in the subjects were allowed to improve their performance by appearing in the examinations further. The conditions for availment of the said improvement scheme have been specified and they are as follows:
i) Candidates can apply and appear for improvement of their performance in one or more subjects within the Group already offered two times only.
ii) Candidates should be allowed to improve only the group of subjects already appeared and passed.
iii) The examination fee for reappearance shall be Rs.40/- for each subject.
iv) The Highest marks secured in each subject in the different sittings shall be taken as qualifying marks.
v) No separate 'Consolidated pass certificate' shall be issued to the

candidate. For every appearance, a separate certificate (mark statement) shall be issued as is done for SSLC.
vi) The facility of improvement of marks is open to be availed of by candidates who have appeared for the higher secondary examination since its introduction in Tamil Nadu in March/April, 1980.
vii) Such candidate, who apply for improvement, should be allowed to write the examination only under the pattern and syllabi in vogue at the time of their reappearance.

4. The above condition in clause (i) has been relaxed further by issuance of G.O. Ms.No.181, Education Department, dated 19.2.1993 to all other courses excepting professional courses. So far as the professional courses, the impugned scheme was restricted for two times only. But the choice of appearing in one or more subjects already passed was not disturbed. It is pertinent to mention that the Scheme of Improvement has not been confined only for the students who have passed after G.O. Ms.No.1457 but had been made applicable retrospectively for all such students of Higher Secondary course, who have passed the examination even conducted from March 1980 onwards. This is to emphasise that the Scheme was made applicable to all the students of Higher Secondary Examination appeared from March 1980 onwards, subject, of course, restricting the number of attempts to two in the improvement examination. The academic year starts from June of each year to the month of April of the succeeding year. To be precise, for these cases, the academic year started in June 2001 and would end in April 2002. The main examination would be in March 2002 and the supplementary examination has already been held in September 2001. For September 2001 examinations, notification was issued and published in newspapers dated 24.6.2001 inviting applications for Higher Secondary Examinations. It contains three columns, viz. type of candidates, eligibility to apply and examination fees. Other particulars of the notification are not necessary excepting Item 2, which is extracted below:

Type of Candi-dates	Eligibility to apply	Examination Fees
H1 type (Improve-ment Candidates)	Candidates who have already passed the Higher Secondary Examination in all the subjects and want to improve the marks obtained in the subjects passed can appear again in one or more subjects. They should apply in the H1 type application form duly furnishing the particulars required enclosing their original Higher Secondary Examination Mark Certificates and the Chalan/Demand Draft for the	

examination fees remitted.
To apply
for each
subject
Rs.50/-
5. Students, who have already passed Higher Secondary and desirous of writing improvement examination, had chosen the subjects of their choice in which they have passed and wanted to improve, had remitted the fees and were preparing for the examination. Then suddenly came the announcement of the Government on the floor of the Assembly that improvement examination from September 2001 would cover all the subjects and not one or more subjects as chosen by the candidate. This was announced on 4.9.2001 followed by a Circular by the Director of School Education on 5.9.2001, which crystallised into the impugned order (G.O. Ms.142, School Education, dated 12.9.2001)

6. This batch of writ petitions and writ appeal have been filed assailing the same. The writ petitions were admitted. Interim orders for September 2001 students were issued permitting to write the papers of their choice but withholding the results pending the disposal of the cause. Now, in addition, the students, who are intending to appear for March 2002 examination, have also joined the fray. We have heard all the matters together.

7. On behalf of the petitioners, M/s. M. Ravindran, learned senior counsel, C. Selvaraj and N. Paul Vasanthakumar have made their submissions and other learned counsel have adopted their arguments. Mr. N.R.Chandran, learned Advocate General, has appeared for the State defending the action of the Government in issuing the impugned G.O.

8. The first contention of the learned counsel for the petitioners is that the Government having evolved a policy of giving two more chances for the students to improve on their performance, which has got a bearing on the admissions into professional courses and that too, to choose their discipline and educational institution with further facility of getting into the bracket of 'free seats' and the said Scheme having been continuously followed for a long number years, cannot now be modified to the detriment of the students and that the said Scheme should be continued. Alternatively, the learned counsel for the petitioners submit that in no event, the Scheme can be abruptly changed retrospectively and should operate from the next academic year i.e. June 2002 onwards and not for the examinations of September 2001 and March 2002.

9. The learned Advocate General counters the said argument submitting that the State can formulate its own policy with regard to educational matters and can always change its policies from time to time having regard to the exigencies and such an educational policy evolved by the State, cannot be interfered with by the Court unless such changed policy is arbitrary or infractive of fundamental fights. The learned Advocate General further submits that inasmuch as there is no arbitrariness or infraction of fundamental rights, the impugned G.O. is unassailable and has

to be upheld.

10. The Government runs the administration and in the course of the same, have to evolve several Schemes and strategies. Framing of education policy is an action within the realm of the Government. It is not for the Courts to delve on that. The Court has got a limited role to play in exercise of its power of judicial review. In MAHARASHTRA S.B.O.S. & H.S. EDUCATION v. PARITOSH (AIR 1984 S.C. 1543), it was held by the Supreme Court that the interpretation of the Courts in educational matters should be to advance public interest and fair play to other candidates in general and should not be defeasive of the same. It is apt to extract the relevant portion.

"29.....As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view, as opposed to a pragmatic one, were to be propounded....."

11. Applying the said legal principle enunciated by the Supreme Court to the instant case, we cannot say that the decision of the Government in issuing the impugned G.O. as either arbitrary or infractive of fundamental right. There is no right for any student to write improvement examination. That is only a grace granted by the Government by way of a Scheme. Such scheme, which has been evolved by the Government, enabling the students to improve upon their performance, can always be done away with and no student can claim any fundamental right to have successive examinations for the purpose of improving upon his performance. State is liable to conduct one examination and it is for the student to strive hard to come out successfully. A student, who fails, may be given some chances according to the Scheme of the Government enabling him to pass out the examination but a student, who passed the examination, cannot claim as of right to appear again and again for improving his tally of marks. But the Government is benevolent even to extend the Scheme of improvement further and not scrap the same. What is introduced in the impugned G.O. is that the student, who wants to write improvement examination, should write all the subjects and cannot choose subject/s of his choice. There is a nexus for the object of imposing appearance in all subjects both professional courses and also languages. A student cannot claim that he will only choose one or more subjects of his choice as were entitled to before, as it has been proved in the working of the earlier Government Orders that the students were concentrating on some subjects for each of the examinations as they had two

chances and by such concentration on particular subject, one or two, for each of the examinations, they were excelling depriving the other students, who are appearing for all the examinations at once. It is needless to mention that concentration in one or two subjects at one examination certainly enhances one's chances to get more marks and by choosing the examinations of the choice of the candidate for improvement and particularly when there are two chances, the other students, who write examinations in one lot, suffer. That is why, the Government has rightly imposed a condition of writing all examinations in one go and not in instalments, keeping intact two chances for improvement examinations after passing the qualifying examination of Higher Secondary course. We do not find any arbitrariness. At the outset, we hold that there is no fundamental right involved in this case and in view of the above discussion, we do not find any arbitrariness in the decision taken by the Government imposing appearance in all the subjects in the improvement examinations. But what really concerns us is the effective date of the impugned G.O. and the question is whether the impugned order should be implemented covering the examinations of September 2001 as also March 2002.

12. As already stated above, the academic year had started in June 2001 and ends in April 2002. In fact, main examination, which is called 'annual examination' is held in March 2002 and what was held in September 2001 was only supplementary. There is no counselling for admission into professional colleges after June and in the instant case, coming to the batch of cases, the counselling for admission to professional colleges was held last in June 2001 and the next counselling due is only in June 2002. If that be so, each academic year from June of each year to April of succeeding year has to be taken as a block period. Among the petitioners, there are students, who have passed their Higher Secondary examination and have secured competitive marks enough for admission into professional courses – be it M.B.B.S., B.D.S., or engineering but could not get the disciplines and colleges of their choice and some of them could not get 'free seats' and stood chance for 'payment seats'. These petitioners, had they been apprised of the changed policy, as envisaged in the impugned G.O., soon after the March 2001 examinations or at least before the completion of the counselling held in June 2001, could have secured admissions according to their rankings in the disciplines and educational institutions, even though not of their choice. Economically poor students could have raised money from other sources to get admissions in 'payment seats'. But all that is lost because of the sudden imposition of 'all subjects' theory by the impugned G.O. issued later, on 12.9.2001. What is more significant and in fact arbitrary is that the last date for payment of fees for September 2001 examination was 11.7.2001, which notification clearly indicates that the students can opt for one or more subjects of their choice for improvement examination. Waiver of fees for the balance of examinations not opted for, is no solace at all. Here, the fees is not the criteria as the very object of the Scheme of improvement examination is to improve upon their previous performance and the same can be achieved only if sufficient time and opportunity is given for preparation for examinations. It is highly impossible and totally arbitrary to expect a student to prepare for the examinations in a matter of days while giving hopes to him all along, that he

can write in subject/s of his choice. The learned Advocate General submits that even if there is no justification in imposing 'all subjects' examination theory for September 2001 students, there is ample time for March 2002 students and in that sense, the impugned G.O. cannot be termed arbitrary. For this proposition, he relies upon the judgment of a Division Bench of this Court in V.J. SHARMI v. THE SECRETARY, SELECTION COMMITTEE, CHENNAI AND ANOTHER (W.A. No.2052 of 2001 Dated 12.12.2001). But the ratio in the said judgment is not applicable in these cases. The said case pertains to revaluation and under the Scheme, the student has to take risk of adopting the marks on revaluation even if there is a decrease in the said marks. The facts in the said case have got absolutely no bearing here. The students were made to believe by notification dated 24.6.2001 that they could write improvement examination in the subject/s of their choice as was being permitted in the years before. Had these March 2002 examinees knew about the change in policy, they would have certainly appeared for September 2001 examination and on issuance of the impugned G.O. of 12.9.2001, there was absolutely no chance for them to opt for September 2001 examination for the reason that the last date for payment of fees was 11.7.2001. So, it is not possible to dissect the examinees of March 2002 examination from those of September 2001 examination. All things being equal, both for examinees of September 2001 and March 2002, they are all similarly placed and as such, they are to be similarly treated in order to satisfy the equality and equal protection clauses enshrined in Article 14 of Indian Constitution. To sustain the plea of the petitioners, only 'doctrine of legitimate expectation' can help, which, in fact, has been advanced by the learned counsel for the petitioners but very vehemently countered by the learned Advocate General. We will now consider whether this batch of cases deserves the application of legitimate expectation theory.

13. There are plethora of precedents elucidating principles of doctrine of legitimate expectation. We feel it not necessary to refer all such decisions. Suffice it to mention some judgments of the Supreme Court, which are closer to the point and which, in fact, have surveyed all the previous judgments. Judgments on the topic of 'legitimate expectation' dealt with by the Supreme Court in NAVJYOTI COO-GROUP HOUSING SOCIETY v. UNION OF INDIA (AIR 1993 S.C. 155), UNION OF INDIA v. HINDUSTAN DEVELOPMENT CORPN. (1993) 3 S.C.C. 499, M.P. OIL EXTRACTION v. STATE OF M.P. (AIR 1998 S.C. 145), NATIONAL BUILDINGS CONSTRUCTION CORPN. V. S. RAGHUNATHAN (1998) 7 S.C.C. 66 and PUNJAB COMMUNICATIONS LTD v. UNION OF INDIA (1999) 4 S.C.C. 727, unanimously hold the view that the principle of legitimate expectation consists of two parts, i.e. (1) substantive and (2) procedural and it was held that a case of substantive legitimate expectation would arise when a Government or an authority within the meaning of Article 12 of Indian Constitution, by representation or by past practice, arouse expectation, which it would be within its powers to fulfil and the Court can interfere when the decision taken by the authority is arbitrary, unreasonable or not taken in public interest. The further requirement is that the representee should suffer detriment acting upon such representation. Yet another legal principle evolved by the above judgments of the Supreme Court is that the doctrine of legitimate expectation as in the case of audi

altrem partem, cannot be put into straightjacket formula and that each case has to be weighed on its facts as to whether the doctrine of legitimate expectation is fit to be invoked or not. While, learned counsel for the petitioners rely upon the Full Bench judgment rendered by this Court in TAMIL NADU TAMIL AND ENGLISH MEDIUM SCHOOLS ASSOCIATION v. STATE OF TAMIL NADU (2002 C.T.C. 344), the learned Advocate General places reliance on another Full Bench judgment of this Court in BHUPESHKAR S.R. AND OTHERS v. SECRETARY, SELECTION COMMITTEE, SABARMATI HOSTEL (1995 W.L.R. 639). Coming to the Full Bench judgment in BHUPESHKAR's case (supra), a writ petition was filed seeking enforcement of the awarding of grace marks to sports personnel as provided in G.O. Ms.No.118, dated 21.2.1994. The said G.O. provided for awarding grace marks to the persons coming under the sportsmen category by way of some incentive and encouragement for admission into medical and engineering courses. When the same was not put into practice while awarding marks, the aggrieved moved this Court. While stating the principles of legitimate expectation, the Full Bench held that even if a G.O. has been issued, it cannot amount to representation and that the representation was never acted upon and in fact the said G.O. was not having sanction of law and as such the Government was entitled to resile from the said G.O. and that doctrine of legitimate expectation cannot be invoked. The facts in the said case have got no bearing on the facts of the instant batch of cases. Here is a case where the benefit of appearing for improvement tests in any of the subjects chosen by the students has been conferred and in fact, conferred retrospectively from 1980 and has been acted upon. In fact, the decision in Full Bench judgment in TAMIL NADU TAMIL & ENGLISH MEDIUM ASSOCIATION SCHOOLS'S case (supra) is applicable to the facts of this case. In the said case, a survey has been made of all the decisions rendered on the doctrine of legitimate expectation and more particularly, the judicial precedents of the Supreme Court mentioned supra. In the said case, decided by the later Full Bench of this Court, certain educational institutions were granted permission to impart education in the language they sought for but later on, the Government of Tamil Nadu changed the policy thereby introducing Tamil as the medium of instruction. The doctrine of legitimate expectation invoked in the said case has been extended by the Full Bench and the action of the Government was set at naught. We are of the considered view that the Full Bench judgment in TAMIL NADU TAMIL & ENGLISH MEDIUM SCHOOLS ASSOCIATION (supra) is applicable to the extent of setting at naught the impugned G.O. in so far as the retrospective operation is concerned, as by the said sudden policy, the interest of the students are jeopardised for the reasons stated in paragraph 12 above.

14. In the circumstances, we hold that G.O. Ms. No.142, School Education Department, dated 12.9.2001, shall be operative only prospectively and for such students, who re-appear for improvement examination in the Higher Secondary course from the academic year 2002-2003 onwards and not for the examinees of September 2001 and March 2002. The results of the September 2001 improvement examination shall be declared forthwith. The students, who want to re-appear for improvement in the examinations to be held in March 2002, shall be entitled to remit their

fees for the subjects of their choice by 15.2.2002 and subject to compliance of the payment of fees prescribed. The respondents shall permit the said students to write improvement examination in accordance with G.O. Ms.No.1457, dated 7.10.1989. It is made clear that G.O. Ms.No.142, School Education Department, dated 12.9.2001 shall come into effect for the improvement examinations from September 2002 onwards. The Writ Appeal and the Writ Petitions are allowed to the extend indicated above. No costs. Consequently, W.A.M.Ps. and W.P.M.Ps. are closed.

(B.S.R., CJ) (A.S., J)
bh/ 08.02.2002

L.R. COPIES TO BE ISSUED.

To

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